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WRITTEN TESTIMONY BY DRU BOWER, VICE PRESIDENT
OF THE PETROLEUM ASSOCIATION OF WYOMING
AND ON BEHALF OF PUBLIC LANDS ADVOCACY
SUBMITTED TO THE UNITED STATES HOUSE OF REPRESENTATIVES
ENERGY AND MINERAL RESOURCES SUBCOMMITTEE
THE HONORABLE BARBARA CUBIN, CHAIRWOMAN

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Madam Chairwoman and members of the Subcommittee, my name is Dru Bower and I am the Vice President of the Petroleum Association of Wyoming (PAW), specializing in public land issues. I am here today representing not only PAW, but also Public Lands Advocacy. We would like to thank the Subcommittee on Energy and Mineral Resources of the Committee on Energy and Commerce for the opportunity to testify at this Oversight Hearing regarding "The Ability of Federal Lands to Meet our Energy Needs."

PAW is Wyoming's oldest and largest trade organization, the members of which account for over ninety percent of the natural gas and over eighty percent of the crude oil produced in the State. PAW is recognized as Wyoming's leading authority on petroleum industry issues and is dedicated to the betterment of the state's oil and gas industry and public welfare.

Public Lands Advocacy (PLA) is a non-profit organization whose members include major and independent petroleum companies as well as non-profit trade and professional organizations that have joined together to foster the interests of the oil and gas industry relating to responsible and environmentally sound exploration and development on federal lands.

In 1996, Wyoming supplied the nation with 3.4% of the total U.S. output of natural gas. In 2002, natural gas production for our state rose to 7.1% of the total U.S. output. Noteworthy is the fact that a significant percentage of Wyoming is managed by federal agencies.

Wyoming is a uniquely rural state comprised of 97,914 square miles and is the ninth largest state in the Union. Lands in the state, which are owned and controlled by the federal government equate to approximately forty-nine percent (49%) of the surface and sixty-six percent (66%) of the mineral estate. These federal lands are managed by agencies such as the National Park Service (NPS), United States Forest Service (USFS) and the Bureau of Land Management (BLM). The remaining 51% of the surface and 34% of the mineral estate are owned by private entities, the State of Wyoming and the Tribes.

ENERGY POLICY AND CONSERVATION ACT

Industry commends Congress for its foresight in requiring the Energy Policy and Conservation Act (EPCA) Study, an assessment of federal lands available for leasing in the most promising basins in the west and the obstacles to development of those resources. Released in January of 2003, the Study addressed

constraints on development with respect to two factors affecting access to oil and gas resources. Those factors included: 1) whether the lands are “open” or “closed” to leasing, and 2) the degree of access afforded by lease stipulations on leased lands. The study found that approximately 39 percent of the federal lands were available for oil and gas leasing, 25 percent is available for leasing with restrictions on operations beyond standard lease terms, and 36 percent of the federal lands are unavailable for leasing. While some groups claim that the EPCA results suggest there is no access problem, this couldn't be further from the truth.

The EPCA study is a solid beginning; however, the analysis does not go far enough to assess the full situation. In addition to addressing leased lands, their associated stipulations and lands unavailable for lease, other important factors must be considered. For example, even on leased lands subject to only standard lease terms, conditions of approval (COA) are imposed in accordance with land use decisions made by the agencies. In other words, while a lease may not be subject to additional stipulations, conditions of approval identified through project level or site-specific environmental analysis may be required for proposed projects. Each condition of approval limits access to the lease to some extent whether through added cost or delay. Therefore, in reality, it is safe to say that all leases issued under standard lease terms are still subject to the same constraints imposed on stipulated leases. Further, some conditions of approval may be more of an impediment to exploration or development than lease stipulations.

While the Petroleum Industry uses the word “Access” as a catchall term, the term is not limited to the availability of federal lands for leasing. Clearly, leasing is an important aspect of access to federal lands for purposes of exploration and development; however, access also encompasses the industry's ability to develop new wells in existing fields. As such, expansion of existing production often faces numerous impediments including:

- ê High cost to industry and long delays for NEPA compliance;
- ê Delays in land use plan revisions;
- ê A wide variety of surveys and inventories on most projects for cultural, wildlife and other resource values that may or may not be present in a project area;
- ê Delays in obtaining drilling and rights-of-way permits due to a lack of adequate federal staffing and funding in high volume leasing and development areas;
- ê Financial burdens placed upon industry who may have to pay for contract personnel to work on permits in field offices;
- ê The same restrictive management imposed to protect species listed as threatened or endangered under the Endangered Species Act are applied to unlisted species (i.e. sensitive, proposed and candidate species);
- ê Endless petitions to the US Fish and Wildlife Service (FWS) to list plant and animal species without supporting scientific data; but, which cause federal agencies to change their management objectives from multiple-use to restricted use; and
- ê Further, environmental groups are not only filing petitions with FWS to list a particular species with limited supporting scientific data; petitions are concurrently being filed by the same parties with BLM to manage the species habitat as an Area of Critical and Environmental Concern (ACEC). An area with an ACEC designation carries additional restrictions for mineral development.

NATIONAL PETROLEUM COUNCIL NATURAL GAS STUDY UPDATE

The National Petroleum Council (NPC) is in the process of updating its 1999 Natural Gas Supply and Demand Study. It is our understanding that NPC is adding an access section which will analyze four high gas potential basins (Powder River, Greater Green River, Uinta/Piceance, and San Juan) to determine the effects lease stipulations, surveys for threatened and endangered species and conditions of approval have on industry's ability to explore for and develop resources from these Rocky Mountain basins. The report is due out in September of this year.

Federal lands must play a growing role in future US energy supplies. Prior to 1980, only 9% of all domestic oil and gas production came from federal land. According to the American Petroleum Institute (API), today

federal lands produce about one third of domestic oil and gas, but are estimated to contain 77% of the oil and 60% of the natural gas resources to be found in the US. In the short period from 1995 to 2003, there has been an increase of at least 75% in estimates of remaining undiscovered domestic oil resources and over 23% in estimates of undiscovered natural gas on federal lands. Despite greater knowledge of the occurrence of gas resources and increased demand for energy, federal policy toward energy development has become increasingly restrictive. PAW and PLA urge members of this committee to take steps to reverse this trend as outlined in the recommendations below.

ROADLESS CONSERVATION RULE

The Roadless Conservation Rule prevents road building on more than 58 million acres of the National Forest System — a move that will place 11.3 TCF of economically recoverable natural gas off limits to exploration and development. Ironically, this decision coincides with Administration warnings of shrinking gas supplies. The Bush Administration sees only “limited opportunities” to increase dwindling natural gas supplies over the next 12 to 18 months, calling for conservation to head off a summer shortage. Moreover, Federal Reserve Chairman Alan Greenspan has publicly stated that dwindling supplies could add serious pressure to the US economy.

According to the Department of Energy Report, Undiscovered Natural Gas and Petroleum Resources beneath Inventoried Roadless and Special Designated Areas on Forest Service Lands, November 2000, 83 percent of the natural gas resource found in the Rocky Mountain Region is located in slightly less than 5 percent of the total proposed Inventoried Roadless Areas (IRA) nationwide. PAW and PLA urge Congress to support modification of the Roadless Conservation Rule. Removal of the 5% IRAs that overlie these important natural gas resources would still allow for the majority of the IRAs to be set aside while providing for development of the critically important natural gas resource base.

FEDERAL REGULATORY PROCESS

The federal regulatory process is exhaustive and cumbersome. To comply with requirements of the Federal Land Policy and Management Act (FLPMA), agencies are required to prepare land use plans. The National Environmental Policy Act (NEPA) requires agencies to evaluate how proposed federal actions will affect the human environment. Environmental Assessments (EA) must demonstrate that impacts associated with a proposed action can be mitigated and that the net effects are not significant. If the EA shows a project has significant impacts, an Environmental Impact Statement (EIS) must be prepared which identifies and discloses the potential effects of the project, along with identified mitigation measures to be used if the project is approved.

Resource Management Plans (BLM) or Land and Resource Management Plans (USFS) have been developed for all federal lands. Each plan is subject to an extensive EIS process; the plans identify what areas will be available for oil and gas leasing and the stipulations to be applied to those leases (i.e. No Surface Occupancy (NSO), seasonal restrictions for wildlife protection, etc.). In addition, the plans establish operating standards, which must be met before proposed projects are implemented.

BLM also conducts a “Determination of NEPA Adequacy” (DNA) before a lease parcel is actually included in a federal lease sale. This determination indicates whether additional analysis is necessary before leasing occurs. (Similar DNA analyses are typically prepared before a project is allowed to proceed.)

It should be noted that once a lease has been issued, it becomes a contractual agreement between the federal government and the lessee. However, while the lease contract gives the lessee the exclusive right to develop the lease, it does not give the lessee the green light to start exploration or development activities. Every proposed project is subject to a site-specific NEPA analysis before a permit is approved by the agency. In addition, consultation with other agencies must occur. For example, consultations with the US Fish and Wildlife Service (USFWS) or a State Historic Preservation Office (SHPO) may be required if listed threatened and endangered species or cultural resource issues are involved, respectively. Each agency may require new restrictions that directly impact access and the economic viability of the project.

BLM has implemented several new Instruction Memoranda designed to make the process more efficient. These include:

- Enhanced Consistencies in Conditions of Approval;

- ê Cultural Resources Management (block clearances of 40 acres and modeling);
- ê Revision of Onshore Order #1;
- ê Revision of the Gold Book on Operations; and
- ê Plans of Development (POD) Requirements (master POD addressing two or more proposed wells in close geographic proximity to one another that share common Drilling and Surface Use Plans).

These IMs are a positive step in the right direction and industry looks forward to their immediate implementation in the field. In fact, industry hopes to work closely with BLM in its revisions of the Onshore Order No. 1 and the Gold Book on Operations. However, there are additional measures that must be taken to ensure timely and cost effective “access” to federal lands. We recommend that new Instruction Memoranda be issued to address the following:

ê In order to eliminate costly and time-consuming redundant NEPA analyses, the agencies must utilize existing NEPA documentation by either tiering or incorporating by reference all existing NEPA analyses to avoid reanalyzing issues that have already been addressed and for which decisions have already been made. In other words, in areas where expanded development is proposed, no new resource data collection is necessary; simply a new cumulative effects analysis is required; and

ê Additionally, no new cumulative effects analysis is necessary if a project proponent wishes to increase recovery of the resource by directionally drilling new wells from existing locations that were already approved and drilled under a previous decision document. Since no new surface disturbance will result, no further NEPA analysis is necessary.

FRIVOLOUS LITIGATION

Another important factor to consider in the federal regulatory process is litigation by “environmentalist groups” whose sole purpose is to delay or deny development of natural resources. In Wyoming, virtually all lease sales, and most project level EAs or EISs, including geophysical projects, have been protested, appealed, or challenged in federal court. The same is true for the other Rocky Mountain States.

Unfortunately, NEPA has become a “tool” that is used as the primary impediment to oil and gas development on federal lands. PAW and PLA support without qualification the Act’s provisions for public comment, identification of alternatives to the proposed action, and consideration of impacts and mitigation measures to be used. Unfortunately, some groups view these same provisions as opportunities to stop proposed projects without regard for cost and delay impacts on land management agencies, the US taxpayer, or multiple users of the public lands.

The cost of “NEPA abuse” is high. For example, the burden of agencies’ management responsibilities frequently shifts to operators; such as preparation of NEPA documentation, resource inventories and species surveys, monitoring activities and ensuring adequate staff is available to process permits. All of these new obligations put a tremendous burden on industry’s ability to economically develop the resource for the benefit of the country.

RECOMMENDATIONS

In conclusion, PAW and PLA appreciate Congress’ recognition of the important role access to federal lands plays in meeting the energy needs of this country through its efforts to pass an energy bill. However, many of the additional measures discussed in this testimony can also be easily addressed through the regulatory process.

PAW and PLA recommend the following:

- ê Reiterate the importance of federal lands in meeting the nation’s energy needs;
- ê Provide adequate funding for BLM staffing to specifically address APD and Rights-of-Way backlogs;

- ê Require timely issuance of leases in areas determined to be available for oil and gas leasing;
- ê Require timely issuance of APD and Rights-of-Way;
- ê Eliminate the 5% of Inventoried Roadless Areas in the Rocky Mountain Region that encompass 83% of the natural gas resources found within the areas covered by the Roadless Conservation Rule;
- ê Encourage aggressive implementation of recently issued BLM Instruction Memoranda (IM) that provide field guidance for improving processing of APDs and Rights-of-Way; and
- ê Recommend issuance of new IMs that eliminate redundant NEPA analyses.

Madam Chairwoman and members of the Subcommittee, thank you again for the opportunity to share with you our perspective regarding the “Ability of Federal Lands to our Meet Energy Needs”.